

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI

UNITED STATES OF AMERICA

Plaintiff,

-vs-

Case No. 20-00266-CR-W-DGK

EARL B. PENN,

Defendant.

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**MEMORANDUM OF MATTERS DISCUSSED AND  
ACTION TAKEN AT PRETRIAL CONFERENCE**

The following matters were discussed and action taken during the pretrial conference:

**PENDING CHARGE:** Felon in Possession of a Firearm, in violation of 18 U.S.C. §§  
922(g)(1) and 924(e)

**TRIAL COUNSEL:**

Government: Brandon Gibson & Joe Marquez

Case Agent: Special Agent Timothy Phipps, ATF

Defense: Lesley Smith & Angela Williams

**OUTSTANDING MOTIONS:** Government's Motion in Limine to Allow Impeachment of  
Defendant with Prior Convictions (Doc. 95)

**ANTICIPATED MOTIONS:** The Government will file a motion for bifurcated proceedings  
(re: predicate offenses) given the Supreme Court's opinion in *Wooden v. United States*, 142 S. Ct.  
1063 (2022), on or before August 8, 2022. The Defendant objects based on *United States v.*  
*Stowell*, 2022 WL 2912661 (8th Cir. July 25, 2022), and will file a response to the Government's  
motion no later than August 12, 2022. The parties' briefing will also encompass whether the jury  
will be permitted to view the Superseding Indictment and the applicable jury instruction(s).

**TRIAL WITNESSES:**

Government: 6 with stipulations; 8 without stipulations

Defense: no additional witnesses; Defendant may testify

**TRIAL EXHIBITS:**

Government: 48 exhibits

Defense: 6 exhibits

**DEFENSES:**

( x ) defense of general denial

( ) defenses of general denial and \_\_\_\_\_

**POSSIBLE DISPOSITION:**

- ( x ) Definitely for trial                      ( ) Possibly for trial  
( ) Motion to continue to be filed          ( ) Likely a plea will be worked out

**TRIAL TIME: 2 days**

Government's case including jury selection: 1 – 1 ½ days

Defense case: 1/2 day

## STIPULATIONS:

- ☒ are under consideration  
☐ not likely  
☐ not appropriate  
☐ possibly as to:  
     ☐ chain of custody  
     ☐ chemist's reports  
     ☐ prior felony conviction  
     ☐ interstate nexus of firearm  
     ☐ other:

**UNUSUAL QUESTIONS OF LAW:** None

## FILING DEADLINES:

### Witness and Exhibit Lists:

Government: August 8, 2022

Defense: August 8, 2022

**Counsel are requested to list witnesses in alphabetical order on their witness list.**

Exhibit Index, Voir Dire, Jury Instructions: August 8, 2022

**Jury instructions must comply with Local Rule 51.1**

## Motions in Limine: August 8, 2022

**TRIAL SETTING:** Criminal jury trial docket commencing August 22, 2022. The parties have no conflicts during the trial docket and can be set on either week.

**OTHER:**

- ( ) A \_\_\_\_\_-speaking interpreter is required.
- ( ) Other assistive devices: \_\_\_\_\_

**IT IS SO ORDERED.**

/s/ Sarah W. Hays  
SARAH W. HAYS  
United States Magistrate Judge